



CTV 06-1 Westford Reply Comments

September 8, 2006

Dear Ms. Matthews:

On behalf of the Town of Westford, I hereby provide the following response to the questions posed in the DTE Notice dated August 23, 2006 entitled "Competitive Franchising Rulemaking, CTV06-1 Reply Comments".

1. Upon receiving cable license applications (e.g., a Form 100) at Town Hall, our Town Manager forwards same to the Communications Advisory Committee (CAC) - formerly called the Cable Advisory Committee - and asks us to review them on behalf of the Westford Board of Selectmen (BoS). This official review process commences as soon as possible, subject to notification and convening of the CAC for this specific purpose at a regular or special meeting, as described below.
2. Since our first cable franchise was established more than 20 years ago, Westford has had a standing CAC, comprised of part-time volunteers appointed for one-year terms by the BoS. New CAC members are usually solicited by the current board to fill vacancies, however, and Westford resident may apply to join the CAC by submitting a form at Town Hall. The current CAC Chairperson has been serving since 1993, when the initial licensee (Nashoba Cable) was still incumbent in Westford, and has participated in numerous License Transfers and Renewal License negotiations with successor franchise holders - Cablevision, AT&T Broadband, and most recently Comcast. The CAC meets regularly, usually on the 4th Thursday of each month, or otherwise on an as-needed basis to deal with urgent matters. A subcommittee is usually appointed by the CAC to negotiate Renewal Licenses, and makes recommendations to the full CAC, which in turn advises the Westford BoS to assist them in making decisions related to their role as Issuing Authority.
3. Westford does utilize a Town Counsel for legal advice in more general contexts, but the CAC and BoS do not take recourse to their services in matters involving cable Issuing Authority responsibilities. For more than a decade, we have utilized Peter J. Epstein, Esq. of the law firm of Epstein & August LLC (101 Arch St., Boston) as our Special Counsel for Cable Matters. This choice of counsel is largely based on the extensive track record of Atty. Epstein in dealing with such issues on behalf of numerous Municipalities. This degree of expertise also "streamlines" the negotiation process because of similarities with the same process in other venues, often in parallel. In the past, Atty. Epstein has generally received his own copies of all cable-related License application materials in parallel with their receipt at Westford Town Hall. Atty. Epstein has worked closely with the Westford CAC's Negotiation Subcommittee in negotiating Renewal License provisions, and with the full CAC in other matters involving the incumbent Cable Operator. On occasion, Atty. Epstein will accompany CAC members to formally address the BoS, and sometimes participates in various Public Hearings in our Town pursuant to Renewals, etc. Although the Westford Selectmen are generally quite knowledgeable about the most pressing cable issues, they generally defer to the deliberations of the CAC when recommendations affecting our negotiation stance are made in conjunction with our Special Counsel. The BoS has the final say regarding all License language.
4. The Westford BoS is always available to act in a timely manner in their official capacity as cable Issuing Authority. This is still true even when the board's membership changes periodically due to the results of local elections. Terms are staggered, so that no more than one or two new members ever appear on the five-member board at the same time.
5. The CAC and the BoS agree in principle that it is desirable to find reasonable ways to streamline the current cable licensing process, with particular regard to the Initial Licensing process of concern in the current context. However, our experience in negotiating Renewal Licenses over the years has indicated that protracted negotiations are often necessary to eventually resolve significant points of disagreement between the parties. Also, the process of coordinating evening meetings between designated CAC members, company representatives, and respective counsel occasionally introduces some unavoidable delays into the negotiation

process.

6. In the past, the westford CAC has always followed state-mandated timelines regarding advance notice for Public Hearings. Apart from this formal requirement of the Ascertainment process, the CAC has also taken recourse to Public and Municipal Surveys to respectively solicit feedback from Town stakeholders regarding cable-related needs of our community. We have generally allowed at least 30 days for interested parties to respond to these surveys - only after which we can tailor our negotiating stance to accommodate important local concerns. Please note that up to now, our experience is limited to Transfers and Renewal Licenses, since no new potential Cable Operator has ever approached our Town since our first RFP resulting in Nashoba Cable's ascendancy as our Town's first franchise holder. To be sure, the three-year process set forth for Renewal License activity by the Cable Division (including Ascertainment and Negotiation phases) has often proved insufficient to resolve important differences with our Cable Operator, sometime necessitating extensions of the expiring License. Even if we were to assume that a new Initial Licensee would be largely "emulating" our incumbent Cable Operator regarding License issues, it is difficult to imagine such a process taking less than a full year. Based on anecdotal evidence entered into the proceedings of this DTE Docket, Verizon generally has been unwilling to "emulate" existing License language in many of our sister Municipalities, which casts aspersions on their petition to streamline the Initial Licensing process to a mere 90 days. Furthermore, it seems extremely disingenuous of Verizon to try to "short-shrift" the licensing timeline as it affects Westford in particular, since they have made no effort here even to apprise us of future plans to update their infrastructure in Westford to enable the rollout of their FiOS TV offering. It seems that they are playing a somewhat cynical game of "wait and hurry-up" in our particular case!

7. The Town of Westford last completed a full Ascertainment of cable-related needs in early 2004, i.e., prior to negotiating our extant Renewal License with Comcast, which became effective in January of 2005. The most pressing issues dealt with the migration of our Local Access studio from Comcast management to a new non-profit Local Access Corporation. Protracted negotiations were needed to resolve these issues. We anticipate that Local Access provisions will continue to be important negotiating points if and when Verizon eventually updates their infrastructure, and makes overtures to seek an Initial License to roll out FiOS TV here in Westford. Although we do have the advantage of having fairly recent Ascertainment results compared to some other Municipalities, this in no way provides confidence that the 90-day timeline proposed by Verizon in these proceedings makes any sense. All Renewal Licenses here have had a five-year term (except the current License with Comcast, persisting for ten years). This appears to be a reasonable interval between Ascertainment exercises, although ongoing advancements in TV delivery technology and related market-based industry trends might imply that some acceleration of such scrutiny might be suitable.

8. As mentioned above, the Town of Westford has not been apprised to date of Verizon's intentions to provide competition with Comcast for TV service here. In fact, the CAC has attempted to contact Verizon proactively to glean information about their plans for our Town - since Westford citizens have expressed a lot of curiosity about this subject. We can only assume that we are not scheduled for construction until late 2007 at the earliest, and a franchise may not be sought here until sometime in 2008 or later.

If you have any further questions or desire clarification of any of the responses provided herein, please feel free to contact the Westford CAC, preferably by sending email to commcommittee@westford.mec.edu.

Very truly yours,

David S. Levy, Chair
Westford Cable Advisory Committee (CAC)